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sold after December 31, 2006 are capable of transmitting enhanced 911 information to the appropriate PSAP, in accordance with the accuracy requirements of section 20.18(i).

[63 FR 2637, Jan. 16, 1998, as amended at 64 FR 60130, Nov. 4, 1999; 64 FR 72956, Dec. 29, 1999; 65 FR 58661, Oct. 2, 2000; 65 FR 82295, Dec. 28, 2000; 66 FR 55623, Nov. 2, 2001; 67 FR 1648, Jan. 14, 2002; 67 FR 36117, May 23, 2002; 68 FR 2918, Jan. 22, 2003; 69 FR 2519, Jan. 16, 2004; 69 FR 6581, Feb. 11, 2004]

EFFECTIVE DATE NOTE: At 68 FR 2918, Jan. 22, 2003, § 20.18, paragraph (j) was revised. Paragraphs (j)(4) and (5) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Scope of section.* This section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. This section also applies to the manufacturers of the wireless phones used in delivery of these services.

(b) *Technical standard for hearing aid compatibility.* A wireless phone used for public mobile radio services is hearing aid compatible for the purposes of this section if it meets, at a minimum:

(1) For radio frequency interference: U3 as set forth in the standard document ANSI C63.19-2001 “American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001” (published October 8, 2001—available for purchase from the American National Standards Institute); and

(2) For inductive coupling: U3T rating as set forth in the standard document ANSI C63.19-2001 “American Na-

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tional Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19-2001” (published October 8, 2001—available for purchase from the American National Standards Institute).

(3) Manufacturers must certify compliance with the test requirements and indicate the appropriate U-rating for the wireless phone as set forth in § 2.1033(d) of this chapter.

(4) All factual questions of whether a wireless phone meets the technical standard of this subsection shall be referred for resolution to Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

(c) *Phase-in for public mobile service handsets concerning radio frequency interference.* (1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must:

(i) Offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(1) by September 16, 2005; and

(ii) Ensure at least 50 percent of their handset offerings for each air interface offered comply with § 20.19(b)(1) by February 18, 2008.

(2) And each provider of public mobile radio services must:

(i)(A) Include in its handset offerings at least two handset models per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store; or

(B) In the event a provider of public mobile radio services is using a TDMA air interface and plans to overbuild (*i.e.*, replace) its network to employ alternative air interface(s), it must:

(1) Offer two handset models that comply with § 20.19(b)(1) by September 16, 2005, to its customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of its network, and make available in each retail store it owns or operates all of these handset models for consumers to test in the store;

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(2) Overbuild (*i.e.*, replace) its entire network to employ alternative air interface(s), and

(3) Complete the overbuild by September 18, 2006; and

(ii) Ensure that at least 50 percent of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide.

(3) Each Tier I carrier must:

(i)(A) Include in its handset offerings four digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

(B) Include in its handset offerings five digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2006, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

(ii) Ensure that at least 50 percent of their handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless phone models the carrier offers nationwide.

(d) *Phase-in for public mobile service handsets concerning inductive coupling.*

(1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(2) by September 18, 2006.

(2) And each provider of public mobile service must include in their handset offerings at least two handset models for each air interface that comply with § 20.19(b)(2) by September 18, 2006 and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store.

(e) *De minimis exception.* (1) Manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of this section. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the requirements of this section.

(2) Manufacturers or mobile service providers that offer three digital wireless handset models, must make at least one compliant phone model in two years. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless phone models in the U.S. would be required to offer at least one compliant handset model.

(f) *Labeling requirements.* Handsets used with public mobile services that are hearing aid compatible, as defined in § 20.19(b) of this chapter, shall clearly display the U-rating, as defined in 20.19(b)(1), (2) on the packaging material of the handset. An explanation of the ANSI C63.19-2001 U-rating system shall also be included in the owner's manual or as an insert in the packaging material for the handset.

(g) *Enforcement.* Enforcement of this section is hereby delegated to those states which adopt this section and provide for enforcement. The procedures followed by a state to enforce this section shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted or incorporated this section, or failed to act within 6 months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints. A written notification to the complainant that the state believes action is unwarranted is not a failure to act. The procedures set

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forth in part 68, subpart E of this chapter are to be followed.

[68 FR 54175, Sept. 16, 2003, as amended at 70 FR 43325, July 27, 2005]

§ 20.20 Conditions applicable to provision of CMRS service by incumbent Local Exchange Carriers.

(a) *Separate affiliate.* An incumbent LEC providing in-region broadband CMRS shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated incumbent LEC. Nothing in this section requires the affiliate to maintain separate books of account that comply with part 32 of this chapter;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated incumbent LEC that the affiliated incumbent LEC uses for the provision of local exchange service in the same in-region market. Nothing in this section prohibits the affiliate from sharing personnel or other resources or assets with its affiliated incumbent LEC; and

(3) The affiliate shall acquire any services from its affiliated incumbent LEC for which the affiliated incumbent LEC is required to file a tariff at tariffed rates, terms, and conditions. Other transactions between the affiliate and the incumbent LEC for services that are not acquired pursuant to tariff must be reduced to writing and must be made on a compensatory, arm's length basis. All transactions between the incumbent LEC and the affiliate are subject to part 32 of this chapter, including the affiliate transaction rules. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated incumbent LEC, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) *Independence.* The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated incumbent LEC. The affiliate may be staffed by personnel of its affiliated incumbent LEC, housed in ex-

isting offices of its affiliated incumbent LEC, and use its affiliated incumbent LEC's marketing and other services, subject to paragraphs (a)(3) and (c) of this section.

(c) *Joint marketing.* Joint marketing of local exchange and exchange access service and CMRS services by an incumbent LEC shall be subject to part 32 of this chapter. In addition, such agreements between the affiliate and the incumbent LEC must be reduced to writing and made available for public inspection upon request at the principle place of business of the affiliate and the incumbent LEC. The documentation must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports. The affiliate must also provide a detailed written description of the terms and conditions of the transaction on the Internet within 10 days of the transaction through the affiliate's home page.

(d) Exceptions. (1) *Rural telephone companies.* Rural telephone companies are exempted from the requirements set forth in paragraphs (a), (b) and (c) of this section. A competing telecommunications carrier, interconnected with the rural telephone company, however, may petition the FCC to remove the exemption, or the FCC may do so on its own motion, where the rural telephone company has engaged in anticompetitive conduct.

(2) *Incumbent LECs with fewer than 2 percent of subscriber lines.* Incumbent LECs with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may petition the FCC for suspension or modification of the requirements set forth in paragraphs (a), (b) and (c) of this section. The FCC will grant such a petition where the incumbent LEC demonstrates that suspension or modification of the separate affiliate requirement is

(i) Necessary to avoid a significant adverse economic impact on users of telecommunications services generally or to avoid a requirement that would be unduly economically burdensome, and